BRUCE A. HARLAND, Bar No. 230477
NANCY C. HANNA, Bar No. 280544
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: bharland@unioncounsel.net
nhanna@unioncounsel.net

Attorneys for Union,
SEIU, UNITED HEALTHCARE WORKERS-WEST

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 32

COMPREHENSIVE CARE OF OAKLAND LP, BAY AREA HEALTHCARE CENTER, Employer, and CAYETANO SANCHEZ, Petitioner, SEIU, UNITED HEALTHCARE WORKERS-WEST, Union.	No. 32-RD-134177 **SEIU UNITED HEALTHCARE WORKERS-WEST'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

Pursuant to the provisions of Section 102.67 of the Board's Rules and Regulations, SEIU-United Healthcare Workers – West ("UHW") hereby respectfully requests that the Board review the Regional Director's Decision and Direction of Election ("Decision") in the above-referenced matter. UHW's request for review is based on the grounds that (1) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of UHW, and (2) the conduct of the hearing resulted in prejudicial error. Thus, UHW requests that the Board grant its request for review and stay the election ordered by the Regional Director.

I. ARGUMENT

UHW hereby incorporates its post-hearing brief as it is fully set forth herein. A copy of the brief is attached hereto as **Exhibit A**.

The Decision in this matter is based on the flawed finding that UHW, demanded, and Bay Area Health Care ("BAHC") agreed to recognize and accrete employees who worked solely in a sub-acute unit into the originally certified Skilled Nursing Facility ("SNF") unit employees. The Regional Director claims to ground this finding on bargaining history between the parties and UHW's collection of dues from its members. However, nothing in the record reflects any evidence that UHW demanded to represent sub-acute employees or to accrete them into the originally certified SNF unit. The fact that there is no written agreement between the parties or addendum to the collective bargaining agreement accreting sub-acute employees into the originally certified SNF unit is a clear indication that no agreement to do so ever materialized. In addition, in the course of conducting the hearing, the officer permitted the presentation of evidence which resulted in prejudicial error to UHW.

There is insufficient evidence in the record to show that the bargaining history between UHW and BAHC reflects any demand by UHW to have the employer recognize or accrete sub-acute unit employees in the SNF bargaining unit, and instead, at best, reflects only that the Employer assumed without discussion that the sub-acute unit employees were included into the bargaining unit. The Decision's finding with regard to the parties' bargaining history solely rests on 1) UHW's request to bargain over conditions affecting SNF unit employees and 2) UHW's

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

requests for information about the sub-acute unit and its potential impact on SNF unit employees. Neither of these factors reflects that UHW demanded recognition to represent, or accretion of, sub-acute employees into the originally certified SNF bargaining unit.

Union Representative Sanjanette Fowler, who requested information about the sub-acute unit and its employees, testified at hearing that she drafted information requests about the sub-acute unit only in the course of her representation of SNF unit members, and never requested or attempted to bargain over the working conditions of employees within the sub-acute unit. In fact, there is no evidence of any written agreement between the parties reflecting that BAHC recognized UHW as the exclusive representative of sub-acute employees or that UHW had demanded, and BAHC had agreed, to accrete sub-acute employees into the originally certified SNF unit. Nor is there any written agreement reflecting any agreement by BAHC to incorporate sub-acute employees into the collective bargaining agreement, which deals only with the SNF bargaining unit.

In her January 30, 2013 email, Ms. Fowler makes clear that her demand to bargain was limited to the conditions under which SNF bargaining unit employees would work if they were to transfer to the sub-acute unit. At hearing, Ms. Fowler testified that as a representative of the SNF unit employees, it was her responsibility to represent the interest of those employees until they no longer were employed within the SNF unit, even if that included representing their interest in transferring to another unit. Her inquiries into the conditions into which bargaining unit members would transfer was only in fulfillment of that obligation.

The Decision fails to take into account that Ms. Fowler's request seeks "to bargain over any proposed *changes* included, but not limited [to] wage rate for such unit, job description and job duties." (emphasis added). Ms. Fowler's reference to "changes" makes clear that her request to bargain was limited to the sub-acute unit's impact on existing SNF bargaining unit members and specifically excluded new employees hired to the sub-acute unit. Moreover, even if the language of the request may be ambiguous, the Decision fails to credit Ms. Fowler's testimony clarifying any such ambiguity. At the hearing, she unambiguously testified that the purpose for her demand was to represent the interests of SNF unit members and only SNF unit members.

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

The Decision further relies on UHW's continued request for information regarding the sub-acute unit's potential impact on SNF unit members. The Decision acknowledges UHW's requests were for the benefit of SNF unit employees rather than sub-acute unit employees, stating that "the Union was concerned with ensuring that the Employer consider SNF unit employees rather than hiring individuals off the street, and concerned that SNF unit employees were not disadvantaged in that regard." Despite this acknowledgement, the decision inexplicably concludes that such information requests evinced UHW's acknowledgment that sub-acute unit employees were bargaining unit members. That conclusion is in direct contradiction to the Decision's finding that those emails were intended to support Ms. Fowler's representation of existing SNF unit employees and wholly lacking any support in the record.

Finally, in support of its conclusion that the bargaining history included sub-acute unit employees, the Decision relies on a June 11, 2014 request for information which requested contact information and pay rates for "all bargaining unit employees including all new hire, and sub-acute unit." However, a request for information regarding sub-acute unit members does not amount to bargaining over the terms and conditions of their employment or otherwise demanding recognition as the exclusive representative of sub-acute employees as bargaining members and the Decision offers no rationale for its finding otherwise. There is no evidence in the record to show that contact information was used to contact sub-acute member employees for representational or any other purpose.

That same email further requests "a spread sheet with rate pay for all bargaining unit employees including all new hires, and sub-acute unit." This request accords with Ms. Fowler's testimony at hearing that her only interest in the sub-acute unit members' rates of pay was to compare it to the pay rates of the SNF bargaining unit members' pay. Moreover, the language could be understood to be referring to "new hires" to the bargaining unit employees and referring to the "sub-acute unit" as a distinct category, rather than understanding that it referred to bargaining unit employees to include both. The Decision's focus on semantics is not only misplaced, but unnecessary where at the hearing Ms. Fowler made clear that she did not consider sub-acute unit employees to be members of the bargaining unit and she inquired as to their details

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

and employment only to learn more about the newly formed unit and better represent the SNF bargaining unit members.

The Decision's focus on ambiguously worded emails only evinces the paucity of evidence in support of its conclusion. At best, the evidence shows UHW requested information about the sub-acute unit, which Ms. Fowler testified was intended to ascertain and monitor its potential effects on SNF employees. There is no evidence that UHW ever asserted that sub-acute employees were included in the bargaining unit, that UHW ever attempted to bargain with BAHC over the sub-acute unit, or that UHW in fact did bargain over sub-acute unit employees and there is no written agreement evincing such bargaining. There is furthermore, no evidence that UHW ever acted as the representative of sub-acute employees in any grievance procedure or by providing any other services to those employees. The collective bargaining agreement lists, and was not amended to include, any sub-acute unit positions within its definition of the recognized bargaining unit and includes no provision setting their wages or any other conditions of their employment. The implication that UHW and BAHC bargained over and reached any agreement concerning the working conditions of a newly-formed classification without memorializing that agreement is simply not credible.

The Decision's reliance on the UHW's receipt of union dues from sub-acute employees is also misplaced and cannot support a finding that UHW recognized sub-acute employees as members of the bargaining unit. In its discussion of the evidence presented at the hearing, the Decision highlights the collection of union dues was driven by BAHC and not UHW and so cannot evince UHW's recognition of the sub-acute unit as included in the bargaining unit. The Decision acknowledges "the *Employer* provided Unit employees with Union membership applications and dues authorization forms." (emphasis added). It further states that "the *Employer* deducts Union dues and remits that amount to the Union along with a list of the names of the employees from whose wages the dues are deducted." (emphasis added). As Ms. Fowler testified at hearing, the collection of union dues was in accordance with the BAHC's designation of bargaining unit membership; and as the Union Representative, she played no role in that designation or the collection of dues. UHW's collection of dues demonstrates only BAHC's

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

mistaken understanding that sub-acute unit employees were included in the bargaining unit, not UHW's agreement of the same.

The Decision that sub-acute unit employees were included in the recognized bargaining unit is wholly unsupported by the record which evinced only the employer's alleged understanding. However, the employer's recognition of a bargaining representative is insufficient to establish the inclusion of SNF unit employees within the bargaining unit. *N.L.R.B. v. Goodless Elec. Co.*, 124 F.3d 322, 328 (1st Cir. 1997). In order for the voluntary recognition of a bargaining representative to be effective, three elements are required: (1) the union must expressly and unequivocally demand recognition, (2) the employer must expressly and unequivocally grant the requested recognition; and (3) that demand and recognition must be based on a *contemporaneous* showing that the union enjoys majority support of the employers' workforce. *Id.* at 329 (emphasis in original). "Board case law emphasizes that the third requirement is essential." *Id.*

Here, even if the Decision found UHW's ambiguously worded requests and BAHC's vague responses to be "unequivocal," there is no indication in the record that BAHC's voluntary recognition of UHW as the bargaining representative of sub-acute members was supported by BAHC's sub-acute unit employees. In fact, to the contrary, the petition at issue in this matter was brought by sub-acute unit employees to challenge UHW as their bargaining representative. That BAHC assumed UHW served as the bargaining representative to its sub-acute members is insufficient to establish that representative relationship.

Finally, the conduct of the hearing resulted in prejudicial error to UHW in two ways. First, during the hearing, the officer permitted BAHC's testimony as to what it understood to be UHW's intention in seeking information from the employer. Not only was such testimony irrelevant and outside of the scope of the witness' personal knowledge, but it served to pollute the proceedings by allowing baseless accusations to be recorded as testimony.

In addition, the hearing officer allowed testimony as to UHW's response to the pending petition by hearing multiple witnesses' testimony regarding UHW's outreach to sub-acute unit employees *after* the filing of the decertification petition. UHW's outreach cannot lend support to

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

the Decision's finding where when faced with a decertification petition, the Union had no choice but to seek the support of all employees slated to vote in an election. However, faced with a decertification petition brought by a unit UHW did not represent, it had no choice other than to seek the support of those employees. It is circular logic at best to use UHW's outreach to the erroneously designated bargaining unit in response to this petition to lend support to the conclusion that the designation was in fact correct. To find that UHW's attempts to garner support in anticipation of a decertification election presupposes that the employees designated as eligible participants are in fact properly eligible before UHW had the opportunity to properly challenge their eligibility.

For the reasons stated above, UHW respectfully requests review of the Decision and a finding that its conclusions were not adequately supported by the record and the hearing was tainted by prejudicial error.

Dated: January 28, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: NANCY C. HANNA
Attorneys for Union,
SEIU, UNITED HEALTHCARE WORKERS-WEST

136942/795735

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

EXHIBIT A

EXHIBIT A

EXHIBIT A

BRUCE A. HARLAND, Bar No. 230477
NANCY C. HANNA, Bar No. 280544
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: bharland@unioncounsel.net
nhanna@unioncounsel.net

Attorneys for Union,
SEIU, UNITED HEALTHCARE WORKERS-WEST

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 32

COMPREHENSIVE CARE OF OAKLAND LP, BAY AREA HEALTHCARE CENTER, Employer, and CAYETANO SANCHEZ, Petitioner, SEIU, UNITED HEALTHCARE WORKERS-WEST, Union.	No. 32-RD-134177 **POST-HEARING BRIEF ON BEHALF OF SEIU UNITED HEALTHCARE WORKERS-WEST**

EXHIBIT A

I. INTRODUCTION

Comprehensive Care of Oakland LP d/b/a Bay Area Healthcare Center ("the employer") is a skilled nursing facility that in January 2013 augmented the healthcare services it offered by establishing a Sub-Acute Unit. For more than a decade before that, SEIU-UHW ("the Union") has been recognized as the exclusive bargaining representative of employer's skilled nursing facility ("SNF") employees in accordance with its collective bargaining agreement ("CBA").

The Petitioner is an employee within the employer's Sub-Acute Unit and seeks the Union's decertification as the exclusive bargaining representative of not only the Sub-Acute Unit employees, but the entire facility. Petitioner repeatedly stated the goal of his petition is only to ensure that Sub-Acute Unit employees be provided the opportunity to elect their own bargaining representative and decide for themselves whether they would like to be represented by the Union. The Union agrees that the Union has never been certified, or recognized by the employer, to represent Sub-Acute Unit employees. Accordingly, it would be inappropriate and contrary to established Board precedent for the Region to allow Sub-Acute Unit employees to participate in the decertification election as they are employees outside of the certified and recognized bargaining unit represented by the Union.

The Union's representation is, and always has been, limited to those employees in classifications outlined in their CBA with the employer. It is the employer alone who now argues that the Union is the exclusive bargaining representative of its Sub-Acute Unit employees, even though there is no evidence that the employer has recognized the Union as the exclusive representative of such employees. Despite the lack of any bargaining history with the Union over the inclusion of Sub-Acute employees or their working conditions, the employer seeks to unilaterally impose upon the Union and Sub-Acute Unit employees a bargaining relationship. Without ever having agreed to extend the CBA to apply to Sub-Acute Unit employees, the employer now claims the existing CBA encompasses and applies to Sub-Acute Unit employees. The employer's sole purpose in attempting to impose such a relationship is to bolster its campaign to decertify the Union's longstanding representation of SNF Unit employees. The existing bargaining unit, negotiated and recognized before the Sub-Acute Unit

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

existed, cannot now unilaterally be amended by the employer for purposes of decertification. As such, the Region should not permit the employer to dilute the eligible voting group with employees who are not represented by the Union, and should direct a decertification election for the SNF unit only because it is the only unit that has be certified and recognized by the employer.

II. ARGUMENT

The general rule is that the bargaining unit in which the decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *W.T. Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *Mo's West*, 283 NLRB 130 (1989). Stated simply, in decertification cases, the *existing unit* is normally the appropriate unit. In determining the appropriateness of a bargaining unit, the Board must afford substantial weight to bargaining history. The Board should be reluctant to disturb a unit established through collective bargaining, where that unit is not repugnant to Board policy or constituted in a manner that impairs employees in fully exercising rights guaranteed under the NLRA. *See Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003); *Red Coats, Inc.*, 328 NLRB 205 (1999). This policy best furthers the NLRA's objective of promoting stability in industrial relations. *See Hi-Way Billboards,* 191 NLRB 244 (1971). The employer has provided no evidence that the recognized existing bargaining unit encompasses Sub-Acute Unit employees.

A. THE CERTIFIED UNIT IS LIMITED TO SNF UNIT EMPLOYEES AND DOES NOT ENCOMPASS SUB-ACUTE UNIT EMPLOYEES

The CBA's recognition clause makes clear that it applies *only* to those employees explicitly enumerated within the agreement. The current CBA became effective in May of 2012, more than six months before the Employer created its Sub-Acute Unit in January of 2013. That agreement was negotiated well before the Union was even made aware of the Sub-Acute Unit, in approximately December of 2012, or of the employer's intention to create a Sub-Acute Unit. The CBA cannot be said to have been intended to encompass employees in positions of which the Union was not aware at the time its terms were negotiated. Furthermore, there exists no evidence of any agreement between the Union and the employer to extend the applicability of the CBA to Sub-Acute Unit employees.

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

As specified in the CBA, any newly established positions are required to be bargained over and incorporated into the agreement before the CBA applied to those positions. See Bates No. BAHC – 000004. The employer provided no evidence of having undertaken any bargaining or agreement with the Union to include Sub-Acute Unit employees – who have different job titles and starting wage rates than the classifications represented by the Union –within the CBA's terms. The Union represents only employees in the SNF unit, because it is only the SNF unit that is included in and contemplated by the CBA; and, therefore, it is only employees in the SNF unit who should be permitted to decide whether or not they wish to be continued to be represented by the Union.

B. THERE IS NO EVIDENCE THAT THE EMPLOYER RECOGNIZED THE UNION AS THE EXCLUSIVE BARGAINING REPRESENTATIVE OF SUB-ACUTE EMPLOYEES

The employer has failed to show that it recognized the Union as the exclusive bargaining representative of Sub-Acute Unit employees. The Union did not demand, and the employer did not approach the Union upon its creation of Sub-Acute Unit, to bargain over the terms of employment or to extend the terms of the CBA to apply to the newly created positions. As testified to by multiple Sub-Acute Unit employees, it was the employer alone who unilaterally set the terms of their employment within the Sub-Acute Unit without reference to the CBA and without bargaining with the Union.

The employer claims to have bargained with the Union in a single twenty-minute meeting in August 2013, more than eight months after it established and staffed its Sub-Acute Unit, but provided no evidence that it reached any agreement with the Union applicable to Sub-Acute Unit employees. The employer alleges to have bargained for a fifty-cent wage differential between Sub-Acute Unit and SNF Unit employees. However, the wages earned by Sub-Acute Unit employees showed no correlation with the wage schedule applicable to SNF Unit employees. In addition, as the Union's representative testified while there is a reference to a fifty-cent wage increase related to wage increases previously bargained for SNF Unit employees, any application of such an increase to Sub-Acute Unit employees was at the employer's discretion and not the result of any bargaining by the Union. The Union showed that the only agreement reached

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

between the Union and the employer with regard to the Sub-Acute Unit, addressed the preservation of SNF Unit employees' terms of employment upon a return transfer to the bargaining unit. The employer has therefore failed to show any credible evidence that it bargained with the Union regarding the terms and conditions of employment fo Sub-Acute employees, or that it recognize the Union as the Sub-Acute Unit's exclusive bargaining representative.

C. THE COLLECTIVE BARGAINING HISTORY REFLECTS THE BARGAINING UNIT DOES NOT ENCOMPASS SUB-ACUTE EMPLOYEES

The Union has long represented SNF Unit employees and has established a lengthy bargaining history regarding the employment conditions applicable to those employees. There, however, exists no bargaining history with regards to the Sub-Acute Unit employees. The employer failed to show that any working conditions applicable to Sub-Acute Unit employees were bargained for, or agreed to, by the Union. The employer presented evidence only that it provided information about Sub-Acute Unit employees, however, as the Union's representative testified, that information was sought in the course of the Union's on-going representation of SNF Unit employees. The record shows that the only Union proposal agreed to by the employer, which is in any way related to the Sub-Acute Unit, addressed the impact of the newly created Sub-Acute Unit on the SNF Unit employees' terms and conditions of employment under the CBA. The Union has shown that it has historically bargained on behalf of, and continues to represent, only SNF Unit employees. It would be patently unfair to allow an entire group of unrepresented employees – who have no history of being represented by the Union – to determine whether or not the Union continues to represent employees in the SNF Unit. Thus, only SNF Unit employees should be eligible to vote in the decertification election.

D. EMPLOYER'S SUB-ACUTE UNIT IS AN APPROPRIATE UNIT FOR PURPOSES OF CERTIFICATION, BUT NOT DECERTIFICATION

For the purposes of a certification election – an RC election – the employer's Sub-Acute Unit could constitute an appropriate unit in and of itself or, if other factors were present, it could constitute an appropriate in combination with the SNF Unit, but only if a labor organization petition for such a unit. But those are not the fact here. The petition is not an RC petition, filed

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

by a labor organization. The petition is an RD petition filed by an individual. Thus, employees in both the Sub-Acute Unit *and* the SNF Unit are not an appropriate unit for purposes of a decertification election in this matter.

Moreover, under the community of interest standards, the Sub-Acute Unit employees share a community of interest among themselves. They have no history of collective bargaining. They have no history of representation by the Union or any other Union. Their wages are set independently of the wage schedule set out within the CBA. Sub-Acute Unit employees also share direct supervision separate from SNF Unit employees. The qualifications for and duties of Sub-Acute Unit are different from the employees in the SNF Unit as well. Sub-Acute Unit employees are required to complete four hours of in-class training and 24 hours of on-the-job training to qualify for their position; training which SNF Unit employees are not required to complete. Sub-Acute Unit employees are also uniformly tasked with tracheotomy and ventilator care, which SNF Unit employees are not qualified to do.

Most importantly, the Union's organizing and bargaining history weighs in favor of finding that the Sub-Acute Unit employees should not be added to the SNF unit now for purposes of this election, even if we put aside the fact that the Union has not been certified or recognized as their exclusive representative. The Union's long history of successful bargaining on behalf of SNF Unit employees weighs against disturbing the existing unit. Accordingly, the Union's bargaining history on behalf of SNF Unit employees as opposed to the lack of any history of bargaining on behalf of Sub-Acute Unit employees supports a finding that the Sub-Acute Unit is an appropriate separate unit.

The employer's organizational structure supports finding the Sub-Acute Unit is not a part of the SNF Unit and is, in fact, separate and independent of the SNF Unit. The employer organizes Sub-Acute Unit employees under direct supervisors distinct from those to which SNF Unit employees report. In addition, while Sub-Acute Unit employees share the same floor as SNF Unit employees, the employer organizes that floor to assign Sub-Acute Unit employees to particular rooms designated for Sub-Acute Care services. The fact that Sub-Acute Unit

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

employees' training and job duties are distinct from SNF Unit employees also underscores that they are not a part of the SNF Unit and are, in fact, separate and independent of the SNF Unit. .

Finally, even if the Board were to determine that the Sub-Acute Unit could appropriately be encompassed within the SNF Unit, that assessment does not preclude a determination that a smaller Sub-Acute Unit is itself an appropriate unit. Where the Sub-Acute Unit constitutes a readily identifiable group, the employer must show "an overwhelming community of interest" with the larger bargaining unit such that there is "no legitimate basis" upon which the Sub-Acute Unit may be excluded from the SNF unit. *In Re Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB No. 83 *16 (Aug. 26, 2011). To meet that standard, the employer must show the Sub-Acute Unit's community of interest overlaps almost completely with the SNF Unit employees. *Id.* The differences in the bargaining history, job duties, job requirements and training as well as pay structure and supervision show more than sufficient distinctions between the SNF Unit and Sub-Acute Unit so that they cannot be said to share an "overwhelming" community mandating a single comprehensive unit.

III. CONCLUSION

The Board is reluctant to disturb a unit established through collective bargaining, where that unit is not repugnant to Board policy or constituted in a manner that impairs employees in fully exercising rights guaranteed under the NLRA. *See Canal Carting, Inc.*, 339 NLRB 969 (2003); *Ready Mix USA, Inc.*, 340 NLRB 946 (2003); *Red Coats, Inc.*, 328 NLRB 205 (1999). This policy best furthers the NLRA's objective of promoting stability in industrial relations. *See Hi-Way Billboards,* 191 NLRB 244 (1971). Here, the parties' collective bargaining agreement recognizes the Union as the representative for the SNF Unit as outlined in the CBA. The employer failed to provide any evidence that Sub-Acute Unit employees should be included within the established bargaining unit and included in a decertification election.

As such, the Regional Director should defer to the collective bargaining history between the parties and find the appropriate unit for decertification is limited to SNF Unit employees, and direct an election in the SNF Unit only. If, however, the Region Director determines that the Union is also the exclusive representative of Sub-Acute employer, he should direct an two

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

separate elections: one decertification election in the SNF Unit and one in the Sub-Acute Unit because the two units do share a an overwhelming community of interest.

Dated: December 19, 2014

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: NANCY O. HANNA
Attorneys for Charging Party,
SEIU, UNITED HEALTHCARE WORKERS-WEST

/792664

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

PROOF OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On December 23, 2014, I served upon the following parties in this action:

Ms. Michele Haydel Gehrke
Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105-2930
Fax: (415) 397-8549
mgehrke@seyfarth.com

Mr. Yosef Peretz
Peretz & Associates
22 Battery Street, Suite 200
San Francisco, CA 94111
Fax: (415) 732-3791
yperetz@peretzlaw.com

copies of the document(s) described as:

POST-HEARING BRIEF ON BEHALF OF SEIU UNITED HEALTHCARE WORKERS-WEST

☑ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from mpiro@unioncounsel.net to the email addresses set forth below.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 23, 2014.

J. L. Aranda

136942/792360

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001

PROOF OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On January 28, 2015, I served upon the following parties in this action:

Ms. Michele Haydel Gehrke
Seyfarth Shaw LLP
560 Mission Street, Suite 3100
San Francisco, CA 94105-2930
Fax: (415) 397-8549
mgehrke@seyfarth.com

Mr. Yosef Peretz
Peretz & Associates
22 Battery Street, Suite 200
San Francisco, CA 94111
Fax: (415) 732-3791
yperetz@peretzlaw.com

copies of the document(s) described as:

SEIU UNITED HEALTHCARE WORKERS-WEST'S REQUEST FOR REVIEW OF REGIONAL DIRECTORS' DECISION AND DIRECTION OF ELECTION

☑ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

☐ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☐ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from mpiro@unioncounsel.net to the email addresses set forth below.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on January 28, 2015.

Rhonda Fortier-Bourne

136841/796211

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
(510) 337-1001